

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB -2 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0169
	)	DEPARTMENT B
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
WADE ALLEN DUNNING,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20090712001

Honorable Edgar B. Acuña, Judge

AFFIRMED

Emily L. Danies

Tucson  
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Following a two-day jury trial held in his absence, appellant Wade Dunning was found guilty of transporting two pounds or more of marijuana for sale. The trial court sentenced him to a four-year prison term. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she has reviewed the record thoroughly but found no arguable

issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided a “detailed factual and procedural history of the case with citations to the record,” and asks this court to search the record for fundamental error. Dunning has not filed a supplemental brief.

¶2 Viewing the evidence in the light most favorable to sustaining the verdicts, *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), we find there was sufficient evidence to support the jury’s finding of guilt. In February 2009, after Dunning, who was driving a sport-utility vehicle (SUV), was stopped by a United States Forest Service officer, the officer smelled a strong odor of marijuana coming from the SUV’s open window and saw several burlap sacks bound with rope in the cargo area. Dunning was arrested and several bundles of marijuana weighing a total of 237.4 pounds—an amount consistent with possession for sale—were found in the burlap sacks, which Dunning claimed to have found nearby.

¶3 The record demonstrates that Dunning was advised of his right to be present at trial and that it could proceed in his absence, and he was aware of his trial date. *See* Ariz. R. Crim. P. 9.1; *State v. Muniz-Caudillo*, 185 Ariz. 261, 262, 914 P.2d 1353, 1354 (App. 1996) (defendant’s voluntary absence may be inferred if “the defendant had personal knowledge of the time of the proceeding, his right to be present, and the warning that the proceeding would take place in his absence if he failed to appear”). Dunning’s sentence was within the prescribed statutory range and was imposed lawfully. *See* §§ 13-702(D), 13-3405(A)(4), (B)(11). Pursuant to our obligation under *Anders*, we have

searched the record for fundamental, reversible error and, having found none, affirm Dunning's conviction and sentence.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Judge